

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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|-----------------------------------|---|---------------------------|
| - - - - - | X | |
| IOWA PRIMATE LEARNING SANCTUARY, | : | |
| d/b/a GREAT APE TRUST, and APE | : | |
| COGNITION & COMMUNICATION | : | |
| INSTITUTE, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| vs. | : | Case No. 4:10-cv-00052 |
| | : | |
| ZOOLOGICAL FOUNDATION OF GEORGIA, | : | <u>HEARING TRANSCRIPT</u> |
| INC., d/b/a ZOO ATLANTA; | : | |
| JAPAN MONKEY CENTRE INSTITUTE | : | |
| AND MUSEUM OF PRIMATOLOGY; | : | |
| SUE SAVAGE-RUMBAUGH, Ph.D.; | : | |
| | : | |
| Defendants. | : | |
| - - - - - | X | |
| BONOBO HOPE INITIATIVE, INC., | : | |
| | : | |
| Intervenor Defendant. | : | |
| - - - - - | X | |

Courtroom, Fourth Floor
U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa
Thursday, December 18, 2014
9:30 a.m.

BEFORE: THE HONORABLE ROSS A. WALTERS, Magistrate Judge.

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KELLI M. MULCAHY, CSR, RMR, CRR
United States Courthouse
123 East Walnut Street, Room 115
Des Moines, Iowa 50309

APPEARANCES:

For the Plaintiffs:

WILLIAM J. MILLER, ESQ.
BRIAN A. MELHUS, ESQ.
Dorsey & Whitney, LLP
801 Grand Avenue, Suite 4100
Des Moines, Iowa 50309-8002

For Defendant
Zoological Foundation
of Georgia, Inc.:
(Via telephone)

GREGORY M. LEDERER, ESQ.
Lederer Weston Craig, PLC
118 Third Avenue SE, Suite 700
Cedar Rapids, Iowa 52401

For Defendants
Savage-Rumbaugh
and BHI:

ROSS H. NEIHAUS, ESQ.
Kaye Scholer, LLP
70 West Madison Street, Suite 4200
Chicago, Illinois 60602

TODD P. LANGEL, ESQ.
Faegre Baker Daniels, LLP
801 Grand Avenue, 33rd Floor
Des Moines, Iowa 50309-8011

P R O C E E D I N G S

(In open court.)

MR. LEDERER: Judge, how are you?

THE COURT: I'm just fine, and you're coming through loud and clear. We're in the courtroom this morning because we also -- somebody asked for a court reporter, and, you know, all of our court reporters are either in Davenport or Council Bluffs in trial so I don't have an in-house reporter. But what is being said is being recorded on our internal recording system, and if anybody would like a transcript of it, they can order it and one of our court reporters in due course will prepare it for you.

This is the -- what I'll just call the bonobos case. And, you know, I deal with this case just infrequently enough that every time something comes up I have to learn all over again who's who and what's what, and I've tried my best, and I think I have a little bit of a head start on that.

But, you know, the last time we were together, which was on October the 8th, the way that conference broke up is that the parties were talking about resolving the issues brought forward by the pending motion for specific performance filed by Ms. Savage-Rumbaugh. You were going to continue your discussions and possibly contact me with regard to a status conference or -- I'm sorry -- settlement conference or we would hold another status conference.

1 Well, we've been asked to hold another status
2 conference, from which I assume it is not settled, but you have
3 continued to talk, and we need to visit today about how we might
4 bring this -- these matters to a close. So I need to be updated
5 on where you are, and, of course, I want to know what you want
6 the Court to do to help you out.

7 Who'd like to take the lead?

8 MR. NEIHAUS: I'm happy to do so, Your Honor. Ross
9 Neihaus for Defendant Dr. Sue Savage-Rumbaugh and Intervenor
10 Defendant Bonobo Hope Initiative.

11 Yes, last time we were in court we discussed possibly
12 settling the case. Since that time the parties have been in
13 regular communication, and both the lawyers and the parties
14 themselves have communicated about settling the case.

15 There were some short discussions about settlement,
16 but, unfortunately, at this point we feel the talks have gone
17 nowhere and we don't feel that they are going to proceed any
18 further so we'd like to proceed with our motion for specific
19 performance.

20 THE COURT: Well, we can set that. Now, you know,
21 you'll recall there was a possibly jurisdictional issue to the
22 extent that the supplemental agreement is attempting to be
23 enforced, because that really wasn't part of interpleader
24 action, and so we don't have to resolve that here today, but
25 that is one gateway issue to dealing with that particular

1 supplemental agreement.

2 Well, all right. So you think we need to go ahead and
3 schedule a hearing, right?

4 MR. NEIHAUS: Yes, Your Honor.

5 THE COURT: How about on the other side?

6 MR. MILLER: Thank you, Your Honor. Bill Miller on
7 behalf of ACCI and, in a way, its predecessor, IPLS.

8 Your Honor, I generally agree with Mr. Neihaus'
9 summary of where we stand. Unfortunately, we haven't come to a
10 resolution. I'd say there's still a possibility, but I don't
11 have a lot of hope, and if they're interested in getting
12 something scheduled, it seems like we should.

13 Your Honor, if you've had a chance to look at the
14 recent briefing, kind of where we left off was, from our
15 perspective, it seemed like we were dealing with an evolving set
16 of issues, evolving and expanding set of issues. At some point
17 it had been suggested by Dr. Rumbaugh that an evidentiary
18 hearing may be necessary. It seems there may be discovery
19 necessary as regarding the various issues.

20 So, unfortunately, it doesn't seem that this matter
21 can just be teed up for a hearing on the motion. We may
22 actually have additional work to do prior to that point, and
23 that would be the only thing I'd offer for the Court's
24 consideration.

25 I've given, I guess, a little bit of thought about

1 that, but I don't know exactly where we go from this moment,
2 given that reality.

3 THE COURT: What is the -- I mean, what, have you
4 narrowed the issues at all? I mean what's the guts of the
5 dispute that still remains?

6 MR. NEIHAUS: Respectfully, Your Honor, I disagree
7 with counsel's characterization of the motion as involving an
8 expanding set of issues. We're dealing with a relatively
9 discrete set of issues.

10 Settlement agreement was signed and it gave certain
11 rights. Since the time the settlement agreement was signed, our
12 client, Dr. -- Dr. Rumbaugh, has been completely locked out of
13 the facility, and the organization, Bonobo Hope Initiative, of
14 which she's a director, has been given almost no access to the
15 facility and has no control over the science in which the
16 bonobos are involved, which is their role as an organization.
17 That's what they were created to do is to control the science in
18 which the bonobos were involved.

19 Bonobo Hope Initiative, per the settlement agreements
20 and the side agreement, are co-owners of four of the five
21 bonobos that currently reside at the facility, and -- and
22 they've simply been locked out and been given no rights. That's
23 the issue we're adjudicating.

24 And there's also a question about when IPLS had ceased
25 to exist, according to both the settlement agreement and the

1 side agreements, they were supposed to notify this Court, and
2 then Dr. Savage-Rumbaugh and Bonobo Hope Initiative were
3 supposed to have the right to relocate the bonobos where they
4 saw fit.

5 So it's a relatively discrete set of issues. It's not
6 expanding. We don't feel that discovery is necessary. We're
7 ready to proceed to hearing as soon as the Court's willing to
8 schedule it.

9 THE COURT: Mr. Miller, do you think discovery is
10 necessary?

11 MR. MILLER: I do, Your Honor. Unfortunately, I think
12 Mr. Neihaus' description of the issues he just gave you
13 indicates some of the issues that are underlying and open. You
14 know, there's arguments. I mean, it's a fine argument for the
15 motion and the like, but there's disputes as to whether or not
16 there was access given, what right to access there was, things
17 like that. I just think that there are open questions.

18 I believe, if I'm not mistaken, the original request
19 for an evidentiary hearing came from Dr. Rumbaugh, and we,
20 frankly, are unsure how we can delve into these issues
21 appropriately in the motion without addressing them. Suffice to
22 say we'd prefer not to, but I just don't know if there's any way
23 that can be avoided.

24 THE COURT: Mr. Neihaus, apart from the discovery
25 issue, do you agree any such hearing would have to be an

1 evidentiary hearing?

2 MR. NEIHAUS: Yes. We'd like an evidentiary hearing.
3 We'd like to call witnesses, introduce documents.

4 THE COURT: I assume ACCI still has the bonobos and is
5 operating the facility; is that true?

6 MR. MILLER: I'm -- I didn't catch --

7 THE COURT: I'm sorry. I assume that your client,
8 ACCI, still has the bonobos and is operating the facility; is
9 that true?

10 MR. MILLER: That's correct, Your Honor. They're
11 taken care of.

12 THE COURT: You're, I was told, not here today on
13 behalf of IPLS, and I -- this may get into the triggering issue,
14 but is IPLS as an entity still actively involved in the case or
15 are you proceeding as the successor of IPLS?

16 MR. MILLER: Well, IPLS -- I'm largely here as the
17 successor, although they are one and the same entity, and over
18 the course of time I think it would show -- the record will show
19 that they're the same, notwithstanding the change of name. And,
20 in fact, as I -- as it occurs to me here, we have issues with
21 regard to the claim about the successor interest and the like
22 and Dr. Rumbaugh's participation and involvement in that as well
23 as we discuss here, so I think there will be some defenses
24 surrounding that that will need to be explored as well.

25 THE COURT: Thank you.

1 Mr. Lederer, what do you think about all this?

2 Are you there?

3 MR. LEDERER: Sorry. I forgot I pushed mute.

4 THE COURT: All right.

5 MR. LEDERER: I apologize. Your Honor, my client
6 signed a settlement agreement and wants to be done with this.
7 They're really not interested in the current dispute.

8 THE COURT: The only -- does the zoo still have an
9 interest in the surviving -- is it Maisha -- of the two
10 original, I'll call them, interpleader bonobos?

11 MR. LEDERER: I believe --

12 THE COURT: Was that --

13 MR. LEDERER: I believe that the settlement agreement
14 ends their interest in any bonobo.

15 THE COURT: And the zoo does not claim any interest as
16 well --

17 MR. LEDERER: They --

18 THE COURT: -- is that true?

19 MR. LEDERER: They're not claiming any interest in any
20 bonobo -- well, in any bonobo that's in Iowa.

21 THE COURT: Right. Well, none of the five
22 that -- well, four may be before us, one for sure is, but none
23 of the -- none of those --

24 MR. LEDERER: None of the bonobos that are appearing
25 before the Court at this time.

1 THE COURT: All right. Now, well, if that's the case,
2 other counsel, is there any reason for the zoo to participate?
3 Is any relief being sought as it relates to the zoo?

4 MR. NEIHAUS: Well, Your Honor, if the settlement
5 agreements are found to have been breached and are undone, then
6 presumably all the zoo's rights that it had originally it would
7 still have, and it might consider a different position at that
8 time.

9 THE COURT: Well, the undoing the agreements was your
10 last resort. You wanted to enforce them.

11 MR. NEIHAUS: That's correct.

12 THE COURT: And is that still your primary relief that
13 you're requesting?

14 MR. NEIHAUS: That is a question that I -- that I
15 can't address right now. There's -- we'd first asked for the
16 settlement agreements to be enforced and alternatively asked for
17 relocation, for Dr. Rumbaugh's and Bonobo Hope's relocation
18 rights to be invoked. We would ask for one of those two forms
19 of relief.

20 THE COURT: All right. So any lingering interest the
21 zoo may have would depend upon whether or not the agreements are
22 undone?

23 MR. NEIHAUS: Yes, Your Honor.

24 THE COURT: All right. But that doesn't sound that
25 the zoo really is interested in claiming an interest; is that

1 true, Mr. Lederer?

2 MR. LEDERER: That's correct, Your Honor.

3 THE COURT: Well, I'll leave it up to you,
4 Mr. Lederer, as to whether and how you want to get out of all
5 this, but I'll go ahead today and we'll tee it up for some kind
6 of evidentiary hearing.

7 Now, before there's an evidentiary hearing, let's talk
8 about discovery. You say you need some discovery. Now, what do
9 you need and how much?

10 MR. MILLER: Your Honor, before we get into that, can
11 I make one suggestion?

12 THE COURT: Sure.

13 MR. MILLER: You know, you noted, and I meant to say
14 something about, the jurisdictional issue. I come here on a
15 continuing goal to get this resolved for my clients and for --
16 for Mr. Neihaus' clients. It seems to me if we have a
17 jurisdictional issue -- and get it resolved in a cost-effective
18 manner.

19 If we have a jurisdictional issue, perhaps we should
20 brief that and address that and then take up the discovery
21 issue. Or they could be simultaneous, but it just occurs to me
22 if the outcome of all this is that this Court's not going to
23 have jurisdiction, which would seemingly be an issue, it seems
24 to me, that is going to be able to be addressed on what we have
25 in front of the Court now, not further discovery, maybe we could

1 take that up first.

2 But, you know, this has been a cloud hanging over our
3 operations. I'd like to get a solution, period, but I'm also
4 mindful of putting a bunch of time and energy towards something
5 that turns out to be fruitless, so I just want to raise that for
6 the Court's consideration.

7 THE COURT: Well, the Court would have subject matter
8 jurisdiction. Now, I'm putting aside the issue as to whether or
9 not Judge Gritzner thinks he should continue to exercise it, but
10 at least the Court would have -- would continue to have
11 jurisdiction over Maisha, right, and that -- and Maisha's status
12 still has to be resolved so there's got to be some sort of
13 hearing in this court with regard to Maisha, right?

14 MR. MILLER: Perhaps, Your Honor, although
15 you're -- the question raised about jurisdiction as we were
16 preparing for today got us looking at that issue thinking about
17 where the Court might be coming from. I think there may be an
18 issue now with respect to diversity being spoiled in the case
19 because we've now had a couple of Iowa intervenors join,
20 Dr. Rumbaugh is also an Iowa citizen, and I think there may be a
21 subject matter jurisdiction problem.

22 I hate to say it, given -- given this -- the current
23 posture of the case. And so I -- I guess I struggle to put my
24 finger on what the supplemental agreement jurisdictional issue
25 would be, but that may be another aspect of it too.

1 THE COURT: Well, the problem with -- well, speaking
2 off the top of my head and not necessarily for Judge Gritzner,
3 the thing about the supplemental agreement is that it involves
4 four bonobos who were not part of the original interpleader. It
5 also involves a separate agreement which is solely between Iowa
6 citizens.

7 MR. MILLER: Right.

8 THE COURT: And I suppose the argument would be
9 somehow that the Court could exercise supplemental jurisdiction
10 over it, but when you have a separate agreement involving
11 separate property, that's where you're going to -- that would be
12 the stumbling point.

13 Certainly if you tried to sue separately right now in
14 federal court solely on the basis of the supplemental agreement,
15 I don't see how there could be diversity jurisdiction, so
16 you're -- I think you'd be limited to supplemental jurisdiction.
17 And the issues are related in that it's the same sort of
18 disagreement between the parties, but you were talking about
19 interpleader and talking about separate property and a separate
20 agreement, a contract that certainly independently the Court
21 would have no jurisdiction over, so that's -- I think that has
22 to be hashed out.

23 But the problem with doing this piecemeal is that
24 you're just going to keep lingering, and I imagine that the
25 upset between the parties will continue and all the angst, and I

1 don't know if this is all particularly good for the bonobos.
2 Obviously, I think both sides are concerned about them and
3 getting a resolution. So I wonder if we might not put the whole
4 thing together.

5 Though if -- I think, as counsel, you would be
6 obligated, if you believe that the Court does not have
7 jurisdiction, to file what is commonly called a suggestion the
8 Court lacks jurisdiction, and the Court would have to decide
9 that. Judge Gritzner has the option, of course, of deciding
10 that separately.

11 But I think we ought to get it ready to go because
12 you're going to have -- you're probably -- frankly, I've never
13 been 100 percent sure of the initial jurisdiction, but we've
14 gone down a long path, but you're probably -- that's why I say
15 you're probably going to have to deal with Maisha somehow so we
16 might as well tee it up for a hearing and have it ready to go so
17 we can resolve it if we can. And if it turns out the Court
18 lacks jurisdiction -- I mean, that issue is going to have to be
19 dealt with. You're going to have to brief it, no question about
20 it.

21 MR. MILLER: Very good, Your Honor.

22 THE COURT: But so let me go back to my question.
23 Now, what do you need in terms of discovery, other than -- does
24 there need to be any discovery other than perhaps involving the
25 principals, Ms. Savage-Rumbaugh and whoever is running ACCI

1 these days? What --

2 MR. MILLER: I -- I don't --

3 THE COURT: Are you talking depositions?

4 MR. MILLER: I don't believe so, Your Honor. I mean,
5 I think we need to understand -- I need to take another look at
6 it, I guess, and get more specific, obviously, but my -- my
7 understanding is there's claims with respect to, "We've been
8 shut out," is the argument generally, and, "We are entitled to
9 certain things," "we" being the -- our opponent, and that
10 they -- when I think those are not, in fact, the case, that they
11 don't give rise to grounds about this enforcement; that
12 everybody has been proceeding under these agreements as they're
13 understood, but then I think there's dispute over what the
14 intent was of the agreement.

15 So I think there would have to be some discovery
16 respect to that and what the intentions and the way that these
17 agreements were operated from the time they were signed.

18 THE COURT: Well, specifically, what would you need
19 other than Ms. Savage-Rumbaugh's deposition? I mean, it seems
20 to me written discovery is kind of an exercise. I mean, you all
21 know what the documents are and you know -- you know who the
22 witnesses are and all that.

23 MR. MILLER: I -- I agree --

24 THE COURT: Don't know if you --

25 MR. MILLER: -- with you on that, Your Honor. I think

1 maybe a deposition of a representative of BHI, but beyond that,
2 that's likely going to be adequate.

3 THE COURT: So probably a couple depositions at the
4 most.

5 Mr. Neihaus, I understand you don't think you need
6 any, but, obviously --

7 MR. NEIHAUS: That's correct, Your Honor.

8 THE COURT: -- if they're going to take one, you might
9 want one as well.

10 MR. NEIHAUS: Yes, Your Honor. If counsel is going to
11 take one, then we'll take one as well, but we don't feel that
12 discovery is necessary.

13 Counsel stated he needs discovery as to the issue
14 about right of access. Right of access and why our clients are
15 not being granted right of access is an issue that their clients
16 know about. That's an issue that they'd have to ask their
17 clients about. They don't need to ask our client why she's
18 being locked out.

19 Our client doesn't know why she's being locked out and
20 she thinks it's unfair, and that's what she's here contesting.
21 So I don't know what purpose discovery would serve at this
22 point.

23 THE COURT: Well --

24 MR. NEIHAUS: And if --

25 THE COURT: -- whatever it is, it would be -- it would

1 be short and it would be in the nature of a couple of
2 depositions, right?

3 MR. MILLER: Sure.

4 THE COURT: Well, if we build in time for that -- and
5 I'd be inclined to let you each take a couple depositions if you
6 want to, but if we do that, if we're looking for a time for an
7 evidentiary hearing, give me a time period that would be
8 reasonable. Sometime, obviously, fairly early next year is what
9 you'd be thinking of, right?

10 MR. NEIHAUS: Yes, Your Honor. And I'd like to stress
11 time is of the essence here. You asked whether ACCI is
12 currently caring for the bonobos. Yes, the bonobos are
13 currently in the ACCI facility, but as we understand it, ACCI
14 might be in very serious financial straits, and we've heard
15 reports that their ability to care for the bonobos going forward
16 is in question.

17 We've heard reports that the power company has
18 threatened to turn off the electric and that -- because of
19 outstanding bills, and that was an issue that surfaced months
20 ago. And at one point the power company threatened to turn off
21 the power on October 25th. And, as we understand it, the power
22 still is on there, but we're not sure how or why that happened.

23 We have concerns about the heating at the facility.
24 The heating has failed in the past. We have concerns about
25 flooding at the facility. The facility is built in a flood

1 plain, and, as we understand it, the water levels are very high
2 this year.

3 The -- the lead scientists at ACCI are only there, as
4 we understand it, one day a month, and the rest of the time the
5 facility is staffed by volunteers, and, as we understand it, the
6 staff of volunteers is thin, and we have questions about whether
7 they're adequately trained to take care of the bonobos.

8 So we have serious concerns about the bonobos'
9 well-being, particularly during the wintertime, so we'd ask for
10 a hearing as quickly as possible, and we're ready to go in
11 January, if Your Honor is ready.

12 THE COURT: Well, I can be ready, but I'm not going to
13 do it, so you've got -- it will be Judge Gritzner.

14 Knowing Judge Gritzner's calendar and knowing we may
15 have a jurisdictional issue which the Court does have to deal
16 with, and allowing a little bit of time for discovery, I really
17 don't see, Mr. Neihaus, how it could be scheduled before March.
18 I think probably a March time frame would be reasonable, if you
19 cooperate in scheduling your depositions.

20 You agree, Mr. Miller?

21 MR. MILLER: Agreed, Your Honor.

22 THE COURT: Why don't I get some time in March for
23 Judge -- Judge Gritzner. I -- I know he has other things set in
24 March so I don't -- I'll do my very best.

25 Kathy, do you -- are you looking at his calendar?

1 LAW CLERK NUTT: I'm in communication right now.

2 MR. NEIHAUS: Your Honor, if I --

3 THE COURT: Sure. Sure.

4 MR. NEIHAUS: -- may make one comment about
5 jurisdiction.

6 THE COURT: Right.

7 MR. NEIHAUS: You mentioned supplemental jurisdiction
8 and that some of the issues are the same. It's our position
9 that the issues are actually exactly the same. While the
10 supplemental agreement is a separate contract, it is mentioned
11 explicitly in the main agreement, and in the main agreement it
12 says that our client only signed the agreement because the
13 parties entered into a side agreement.

14 The side agreement mirrors very closely, and in some
15 place -- in a lot of places is identical to, the language of the
16 main agreement. It's the same thing just concerning different
17 bonobos.

18 So the actual legal issues and the factual issues that
19 we're going to present are the exact same thing, the exact same
20 witnesses, the exact same documents, so we think the Court could
21 rather easily exercise supplemental jurisdiction. There's also
22 an argument that the side agreement was incorporated by
23 reference into the main agreement so --

24 THE COURT: I'm aware of that reference, but
25 it's -- it bears looking at. I'll just leave it that way.

1 Yes.

2 LAW CLERK NUTT: March is not good. And then how
3 long?

4 THE COURT: What's that?

5 LAW CLERK NUTT: How long?

6 THE COURT: Well, your evidentiary hearing's going to
7 take, what, a day or two?

8 MR. MILLER: I would think so, Your Honor.

9 THE COURT: We'll book it for two.

10 MR. MILLER: That's probably safest.

11 THE COURT: Well, March isn't so good.

12 LAW CLERK NUTT: Or Judge Gritzner doesn't --

13 THE COURT: Just in case we can do it in February, see
14 if he has two days available in February.

15 MR. MILLER: Your Honor, respectfully, I have got two
16 trials scheduled in February. It's going to be very difficult
17 for me to do something in February, but --

18 THE COURT: All right.

19 MR. MILLER: -- I understand.

20 Your Honor, is there -- should the parties consent to
21 your jurisdiction? Is there anything to prevent you or your
22 successor to get involved or --

23 THE COURT: Well, you can consent, if that's what you
24 want to do, and we could schedule it. I -- I am retiring in
25 February, but I'm going to be on what's called recall status, so

1 I'll still be handling part of the docket, so I'd probably keep
2 it if you consent, but that's entirely up to all of you. You
3 don't have to do that.

4 LAW CLERK NUTT: The suggestion is that they contact
5 Judge Gritzner's chambers for late March, April time.

6 THE COURT: All right.

7 LAW CLERK NUTT: (Inaudible.)

8 THE COURT: All right. I'm not used to this IM stuff,
9 but apparently we're being told that you can contact Judge
10 Gritzner's chambers for a late March, early April time frame for
11 two days, though I don't -- Kathy, that's what they'd be asking
12 for is two days in late March, early April.

13 LAW CLERK NUTT: Right.

14 MR. MILLER: Your Honor, if we --

15 THE COURT: Because even if they went -- does he want
16 them to contact him?

17 LAW CLERK NUTT: Well, that's a suggestion.

18 THE COURT: All right.

19 LAW CLERK NUTT: He's in trial right now, so I'm
20 not --

21 THE COURT: Oh, that's right. He's in trial, right.
22 Okay.

23 LAW CLERK NUTT: -- directly with him.

24 THE COURT: Yes.

25 MR. LANGEL: And, Your Honor, I do have -- this is

1 Todd -- I do have an arbitration hearing scheduled for the last
2 week of March, so that would be an issue for me --

3 THE COURT: Well --

4 MR. LANGEL: -- if it was within that week. Early
5 April is better for me, but --

6 MR. NEIHAUS: If the parties consented to Your Honor's
7 jurisdiction, when would Your Honor be able to schedule a
8 hearing?

9 THE COURT: Well, I will -- we'll look.

10 LAW CLERK NUTT: Well, here. I'll just let you look
11 at that. March is not good for (inaudible).

12 THE COURT: Is this -- is this really going to go?

13 LAW CLERK NUTT: Potential. This one --

14 THE COURT: This is a non-jury?

15 LAW CLERK NUTT: This one has an issue, yeah.

16 THE COURT: Okay. We could do it maybe -- if it goes
17 it probably won't take three days, will it? Maybe we could.

18 Counsel, how about -- well, I -- I have trials
19 scheduled in March, but you know how they go, they tend to drop
20 out. But there is -- with some confidence, I would be available
21 Wednesday, the 11th, for two days, because whatever I have then
22 will probably disappear or shorten.

23 LAW CLERK NUTT: For Judge Gritzner, the 14th and 15th
24 of April are looking good.

25 THE COURT: So how are you on that April date, the two

1 of you or two sides, everybody?

2 MR. NEIHAUS: Again, Your Honor, we're concerned about
3 waiting that long for a hearing because of the bonobos'
4 condition and the financial condition of ACCI.

5 You know, under both the settlement agreement and the
6 side agreement, IPLS, ACCI's predecessor entity, was supposed to
7 let us know when they were having financial trouble, could no
8 longer support the bonobos, and instead of letting us know --
9 and they were supposed to let the Court know, and instead of
10 doing that they simply formed a new organization, purported to
11 transfer title to the bonobos, kept us in the dark about it. In
12 fact, even after ACCI had been formed and the bonobos has been
13 transferred, they keep -- they kept speaking to us about IPLS,
14 the predecessor entity, even though that was no longer the name
15 that they were officially going under.

16 So we don't have confidence that if there's a problem
17 this winter we'll know about it, which is why we want to hasten
18 the proceeding. The March date, if Your Honor would consider
19 it, would be our preference.

20 THE COURT: Well, I'm available that -- during that
21 time frame and -- but it's up to you as to whether or not you
22 want to consent, if you want to talk with Judge Gritzner's
23 chambers.

24 Aha. We're moving as we speak. He might be able to
25 do it as early as late February, but I don't have the date from

1 him, though.

2 Can you get your depositions done fairly quickly?

3 You've got to do some briefing too, you know.

4 MR. MILLER: Your Honor, my problem is I'm scheduled
5 for a trial in front of Judge Strand on February 23rd in the
6 Northern District, so --

7 THE COURT: Okay. Likely to go, you think?

8 MR. MILLER: It is likely to go, unfortunately. Well,
9 fortunately, but --

10 MR. NEIHAUS: Your Honor, if the date gets pushed back
11 too far, especially through the winter, would it be possible to
12 ask for some assurances from ACCI that they have the financial
13 ability to support the bonobos, that they have procedures in
14 case of an emergency, that they'll let us know in cases of
15 emergency? Would it be possible to establish that?

16 THE COURT: Any problem with that?

17 MR. MILLER: Your Honor, I've obviously been sitting
18 here silent while Mr. Neihaus has been teeing off of my client,
19 and I have to say that everything he said is not a concern, and
20 that's been expressed to Mr. Zifchak, with a copy to
21 Mr. Neihaus, on these very issues in the past couple weeks. And
22 we're happy to provide assurance with respect to the safety and
23 well-being of the bonobos. I don't know whatever we tell them
24 is going to satisfy them.

25 And, frankly, if Ms. -- if Dr. Rumbaugh and BHI want

1 to help contribute to that safety, we're all ears for a donation
2 or whatever they'd like to do. They continue to come forward
3 with claims about this, you know, that there's all these
4 problems, and we've responded to all of them. And the purported
5 electricity issue and the like is all explainable. In fact,
6 Dr. Rumbaugh was part of this IPLS issue that they're claiming
7 was some sort of an in the midst of the night changeover.

8 So, you know, I -- I don't want to go too far in
9 saying, you know, we're going to all hold hands and go forward,
10 but if there's some sort of concern about the well-being of the
11 bonobos, we've addressed it, and if there's something specific
12 they want us to address further, we'll continue to do that. And
13 if there needs to be a report that the heat's on weekly, I've
14 already offered that, I believe, and if I haven't, I am now.

15 MR. NEIHAUS: Again, respectfully, Your Honor, last
16 time there were problems at the facility, we didn't know about
17 it. IPLS simply formed a new entity, purported to transfer
18 title, and which led us to being in court today. If ACCI would
19 put something on the record, that, perhaps, would give us a
20 little more comfort about the --

21 THE COURT: Well, they --

22 MR. NEIHAUS: -- position of the facility or the
23 bonobos.

24 THE COURT: -- volunteered to provide some sort of
25 weekly report about --

1 MR. MILLER: What do you want on the record?

2 THE COURT: What's that?

3 MR. MILLER: I don't know what they would want on the
4 record. I mean, that's --

5 THE COURT: What --

6 MR. MILLER: I'm open to it.

7 THE COURT: What assurance would you like on the
8 record, Mr. Neihaus?

9 MR. NEIHAUS: The amount of funds that ACCI has
10 available, its emergency procedures. We'd like to know who is
11 at the facility and when; assurances that the heat will be kept
12 on and, if it fails, that there's procedures to address it;
13 assurances that there's funds to pay the electric bill;
14 assurances that the bonobos will receive proper veterinary care
15 and that there's funds available for that.

16 THE COURT: Well, that's quite a mouthful to do right
17 here in the courtroom.

18 MR. MILLER: And respectfully, Your Honor, one problem
19 here is it's all in the eye of the beholder. We have told them
20 over the course of the past several weeks when we've been
21 talking about these issues -- the current staffing, the
22 situation with the electrical and the heat, issues with respect
23 to funding -- you know, they've got claims of all sorts that the
24 funding's a problem, but we see no funding or assistance from
25 them, despite the claim that they have similar or same or

1 shared, whatever the standard is, ownership.

2 So, you know, I mean, I can try to continue to provide
3 this information, but we feel like it's been provided, and if
4 there's some legitimate claim or concern notwithstanding this
5 information provided, bring it back to me. Let me understand
6 it.

7 THE COURT: Well, I don't think we're getting very far
8 trying to hash this out on the record right now. Here's what
9 we're going to do. We're going to get a -- I'm going to do my
10 best to get the earliest possible two-day evidentiary hearing
11 date before Judge Gritzner. In the meantime, if you -- and it's
12 entirely up to you, if you want to consent to a magistrate judge
13 jurisdiction, I -- as I say, I think I can set it during the
14 middle of the week of March the 11th for a two-day period.

15 But that's entirely up to you as to whether you want
16 to do that. You two talk and decide if that's what you want to
17 do. If that's what you want to do, we'll book it then. If not,
18 I'm going to work with Judge Gritzner's chambers.

19 Then backing up from there, can't get much done before
20 the end of the year, but we're going to -- regardless of when we
21 set this, you're going to be taking your depositions during the
22 month of January? Is that reasonable?

23 MR. NEIHAUS: Yes, Your Honor.

24 MR. MILLER: Seems so, Your Honor.

25 THE COURT: All right. Now, I'm going to limit it

1 to -- not knowing for sure, but two per side. I know you each
2 want one, but sometimes depositions beget depositions. So two
3 per side, fair enough?

4 MR. MILLER: Fair enough.

5 THE COURT: To occur in January.

6 Now, even though I'm not going to stage it and hold
7 everything in abeyance pending a jurisdictional ruling, I think
8 we ought to get the briefing in on legal issues, which would
9 include the summary -- the jurisdictional issue, and get that
10 in -- oh, that's going to -- we're going to have to get that at
11 least by mid-February so the Court can get well ahead on that.

12 So I'm going to -- this ought to give you time to get
13 your -- to the extent you want to deal with facts, but we're
14 really going to need some briefing from you particularly on that
15 jurisdiction issue, and let's have that by, oh, say February the
16 16th, prehearing briefs.

17 I will set a sort of a -- what I'd call a mini final
18 pretrial conference, and the date that I set that will depend
19 upon the hearing date. That -- in any event, that will be
20 before me, and I'll set that, and what we will want at that
21 time -- you will have already given us your briefs, but we would
22 very much like a list of witnesses and exhibits, and we will
23 want you to do your witnesses in the form we usually do for
24 trials, and that is we'd like you to categorize them, Categories
25 A, B and C.

1 Mr. Neihaus, Mr. Langel can help you with this, but if
2 it's Category A, it comes in right from the beginning, you don't
3 have to fuss around with offering it; Category B and C, reserve
4 objections to foundation or reserve all objections, but at least
5 state your objections to -- to each other.

6 So we'll look for a witness and exhibit list, we'll
7 get together for a little final pretrial conference, make sure
8 we're all on the same page there. And what all we're lacking
9 right now is a hearing date.

10 Now, once we get that date lined up, does that -- are
11 you able to live with that process to get it all ready to go,
12 Mr. Neihaus?

13 MR. NEIHAUS: That sounds good to me, Your Honor.

14 THE COURT: Mr. Miller?

15 MR. MILLER: We will, Your Honor.

16 THE COURT: That's what we'll do, then.

17 MR. LANGEL: And should the parties agree to a
18 specific date to exchange witness and exhibit lists in advance
19 of the pretrial?

20 THE COURT: Yes, I think you should. We -- that's
21 part of the normal pretrial process. When do you think you'd be
22 able to do that?

23 MR. LANGEL: Again, it depends on the date of the
24 hearing, but I would propose, what, a week or ten days?

25 MR. MILLER: I was going to say a week before. That's

1 fine.

2 MR. LANGEL: A week before.

3 THE COURT: Okay. Well, you're going to be in our --
4 at our little final pretrial conference. By the time I set
5 that, we'll be exchanging witness and exhibit lists, so I'll
6 build that into it, okay? Final pretrial, I'm calling it the
7 final pretrial conference, will be about a week or ten days
8 before our hearing, and we can do that by phone, if that's okay.

9 Mr. Lederer, I don't know the extent to which you're
10 going to be participating in all of this, but do you have any
11 issues with any of that?

12 MR. LEDERER: Well, my client just doesn't want to
13 spend any more money on this --

14 THE COURT: You --

15 MR. LEDERER: -- and that was why they -- that's why
16 they agreed to the settlement in the first place.

17 THE COURT: As --

18 MR. LEDERER: And nobody has said the reason that the
19 settlement's not being performed is because of something my
20 client did or didn't do, so I'd really like to -- I mean, I'm
21 not charging my client for this phone call, and I really don't
22 want to spend more -- more time on it, but I want to do what
23 I -- what I owe to the Court with respect to my professional
24 obligations as counsel of record for a party in a case that's
25 still going on.

1 THE COURT: Your client's toehold in this case is so
2 slight and the interest more theoretical than real, as far as
3 I'm concerned, you don't have to file a brief, you don't have to
4 participate in the hearing. It might be helpful from your
5 client's standpoint and the Court's standpoint to file a
6 prehearing statement as to your client's position in the matter,
7 but as far as I'm concerned, they would not have to participate
8 in a hearing. All that is up to them.

9 MR. LEDERER: Thank you, Judge.

10 THE COURT: And you participate to the extent that
11 you -- that you wish to, and I'm not going to --

12 MR. LEDERER: Thank you.

13 THE COURT: I'm not going to --

14 MR. LEDERER: I appreciate the clarification. Thank
15 you very much.

16 THE COURT: Right. I'm assuming you'll present no
17 evidence. We won't look for a witness or exhibit list from you.
18 Unless you tell me otherwise, we won't expect you to participate
19 in the hearing. In fact, we'll schedule it without further
20 contact with you, although you'll know when it is, obviously.
21 And you don't have to make any prehearing filings, though, as I
22 say, it might help, since you're still nominally in this, to
23 file some statement on behalf of your client as to your client's
24 position in the matter.

25 MR. LEDERER: I understand, and I appreciate the

1 accommodation, Your Honor. Thank you very much.

2 THE COURT: Thank you.

3 Counsel, anything more we can do today, do you think?

4 MR. MILLER: I don't think so, Your Honor. This is
5 Bill.

6 MR. NEIHAUS: No, Your Honor. Thank you very much.

7 THE COURT: All right. Well, I'll get an order out
8 based upon what we've talked about today.

9 Now, you know, you still do have the settlement
10 conference option, if that is of any interest and if you think
11 that would be something that might resolve it. You don't have
12 to go through that just for the exercise of going through it,
13 but if you think it might be helpful, you still have that option
14 available to you, though you won't if you consent to me; it will
15 be some other magistrate judge that would do it.

16 MR. NEIHAUS: Thank you, Your Honor.

17 MR. MILLER: Thank you.

18 THE COURT: Thank you. We're in recess.

19 (Conclusion of recording.)
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1 C E R T I F I C A T E

2 I, Kelli M. Mulcahy, a Certified Shorthand Reporter of
3 the State of Iowa and Federal Official Court Reporter in and for
4 the United States District Court for the Southern District of
5 Iowa, do hereby certify that the foregoing pages, 1 through 32,
6 represent a true and complete transcript of the captioned
7 hearing which was electronically recorded by the FTR Gold system
8 and later reduced to typewriting by me to the best of my
9 ability.

10 I further certify that the transcript page format is
11 in conformance with the regulations of the Judicial Conference
12 of the United States.

13 Dated at Des Moines, Iowa, this 29th day of December,
14 2014.

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/s/ Kelli M. Mulcahy
Kelli M. Mulcahy, CSR, RMR, CRR
Federal Official Court Reporter